IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 645 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

LALJIBHAI BHIKHABHAI PRAJAPATI

Versus

VISHNUBHAI BABABHAI PRAJAPATI

Appearance:

1. First Appeal No. 645 of 2004

MR UA TRIVEDI for the appellant

NOTICE SERVED for Respondent No. 1

MR MEHUL SHARAD SHAH for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE M.H.KADRI

Date of decision: 19/04/2004

ORAL JUDGEMENT

1. The appellant (original claimant), by filing this

appeal under Section 173 of the Motor Vehicles Act, 1988 ('Act' for short), has challenged the judgment and order dated December 15, 2003, passed by the Motor Accident Claims Tribunal (Main), Mehsana, rejecting application Exh.5 filed by the claimant under Section 140 of the Act in MACP No.635 of 2002.

2. On May 30, 2002 the appellant was travelling in Luxury Bus No.GJ-2/V-9665. Because of rash and negligent driving of the respondent No.1, the bus turned turtle near Balol, on Mehsana-Becharaji road, and, in the said accident, the appellant had sustained serious injuries and dislocation of the left hip. The appellant, at the time of filing application Exh.5 under Section 140 of the Act, had produced disability certificate at Mark 11/4 issued by Dr. K.J. Patel. The Tribunal has held that the dislocation was not privation of any member or joint and there was no permanent disablement as defined under Section 142 of the Act and has rejected the application Exh.5 which has given rise to filing of this appeal by the original claimant.

3. At the time of deciding the application filed by the claimant under Section 140 of the Act, the Tribunal is only required to see whether the claimant had sustained injuries in a vehicular accident which had resulted into permanent disability. Prima facie, the disability certificate issued by Dr. K.J. Patel, had proved that the dislocation sustained by the claimant had resulted into a permanent disability. In my view, the ingredients of Section 140 of the Act are satisfied having regard to the evidence produced by the claimant and, therefore, the application Exh.5 filed by the claimant in MACP No. 635 of 2002 deserves to be allowed. The respondent No.2-National Insurance Company is directed to deposit with the Tribunal the amount of Rs.25,000/- under 'no fault liability' along with interest at the rate of 9% from the date of the application till the date of deposit and costs of the application within eight weeks from today. However, in view of the contention raised by the learned advocate, Mr. Mehul Sharad Shah, appearing for the respondent No.2-Insurance Company, that, as dislocation was not privation of any member or joint, it cannot be said to be permanent disablement, and to protect the interest of the Insurance Company, the following directions are given.

4. The original claimant shall file an undertaking before the Tribunal within four weeks from today to the effect that the main claim petition shall not be abandoned, shall not be withdrawn, and shall not be

permitted to be dismissed for default or for any other cause, and that the claimants shall obtain a decision on merits in the said claim petition. The amount awarded under the impugned order shall be adjusted against the final award in the main claim petition.

5. On the said undertaking being filed, 40% of the amount awarded shall be permitted to be withdrawn by the claimant without security. The remaining 60% of the amount shall be invested in a Cumulative Fixed Deposit in any nationalized Bank in the name of the Registrar of the Tribunal for a period of five years. The deposit shall be renewed from time to time till the main petition is disposed of.

6. Subject to the observations and directions hereinabove, the appeal is allowed, and the application Exh.5 filed by the claimant in MACP No.635 of 2002 is also allowed. There shall be no order as to costs. Looking to the peculiar facts of the case, the Tribunal is directed to expedite the hearing of the main claim petition.

(M.H. Kadri, J.)

(swamy)